

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On April 10, 2004 appellant, then a 44-year-old mail handler, sustained injury to her left upper extremity while driving a power jack. She stopped work that day and returned to modified duty in October. On August 12, 2005 OWCP accepted that she sustained left hand tendinitis.

On January 24, 2011 appellant submitted a schedule award claim. In an undated report, Dr. Daisy A. Rodriguez, a Board-certified internist, advised that the ratable diagnoses were tenosynovitis of the left hand/wrist; traumatic arthropathy of the left hand; joint pain of the left hand; sprain of the left wrist; herniated discs at C2-3, C3-4, C4-5 and C5-6, preexisting with exacerbation; cervical radiculopathy; and chronic pain. Dr. Rodriguez stated that maximum medical improvement was reached on May 11, 2010. She provided a left upper extremity impairment evaluation in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*).² Under the wrist regional grid, for wrist sprain, appellant had a default value of one percent. She found that appellant's *QuickDASH* score of 103 was severe, for a grade modifier for functional history adjustment of three, a zero adjustment for physical examination, and found that an adjustment for clinical studies not applicable. Dr. Rodriguez applied the net adjustment formula, which yielded an adjustment of one, for two percent impairment due to wrist sprain. She then followed the same procedure for a diagnosis of wrist tenosynovitis/tendinitis, reaching the same conclusion that appellant had two percent impairment due to tenosynovitis. Dr. Rodriguez determined that appellant had a seven percent digital impairment for post-traumatic degenerative joint disease and one percent impairment due to peripheral nerve radiculopathy. She concluded that appellant had combined left upper extremity impairment of eight percent. Dr. Rodriguez attached a September 23, 2010 electrodiagnostic report, in which Dr. Byrne L. Solberg, a Board-certified physiatrist, noted findings consistent with cervical radiculopathy which he advised were directly related to a work injury of September 23, 2010, stating that the findings were not seen on a previous study of December 12, 2006.³

On January 31, 2011 OWCP forwarded the record, including a statement of accepted facts, to an OWCP medical adviser for review. The transmittal memorandum and the statement of accepted facts noted that the only accepted condition was left hand tendinitis. In a February 5, 2011 report, Dr. Morley Slutsky, a medical adviser Board-certified in occupational medicine, reviewed the medical record. He noted that the accepted condition was left hand tendinitis and advised that the date of maximum medical improvement was September 7, 2010, the date of Dr. Rodriguez's most recent examination. Dr. Slutsky stated that, in accordance with the sixth

² A.M.A., *Guides* (6th ed. 2008).

³ The record also contains an August 12, 2009 report in which Dr. Dennis W. Ivill, an attending Board-certified physiatrist, provided examination findings noting no atrophy in any extremity. In an October 1, 2010 report, Dr. Rodriguez noted the history of injury in 2004, appellant's complaints and her review of the September 23, 2010 electrodiagnostic study. She reported that appellant had a second work injury on December 13, 2005. Dr. Rodriguez indicated that examination was performed on September 7, 2010, provided examination findings, and diagnosed tenosynovitis of the left hand/wrist; traumatic arthropathy of the left hand; joint pain of the left hand; sprain of the left wrist; herniated discs at C2-3, C3-4, C4-5 and C5-6, preexisting with exacerbation; cervical radiculopathy and chronic pain. On October 2, 2010 she noted her review of medical records. Also attached were a disability questionnaire, and an activities of daily living questionnaire.

edition of the A.M.A., *Guides*, appellant's primary diagnosis of the left hand region was tendinitis which he rated under Table 15-3, finding that appellant had a class C impairment for a default value of one percent. He then applied the grade modifiers. Dr. Slutsky agreed with Dr. Rodriguez's assessment of a zero grade modifier for physical examination and that a modifier for clinical studies was not applicable. He disagreed with her assessment for functional history, stating that, as her modifier for functional history was more than two grades larger than that of the physical examination grade modifier, the functional history grade modifier was deemed unreliable and should be excluded. Dr. Slutsky applied the net adjustment formula and concluded that appellant had a one percent impairment of the left upper extremity.

By decision dated February 15, 2011, appellant was granted a schedule award for a one percent impairment of the left upper extremity, or a total of 3.12 weeks, to run from September 7 to 28, 2010.

LEGAL PRECEDENT

The schedule award provision of FECA,⁴ and its implementing federal regulation,⁵ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁶ For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁷ For decisions issued after May 1, 2009, the sixth edition will be used.⁸

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).⁹ Under the sixth edition, for upper extremity impairments the evaluator identifies the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS).¹⁰ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹¹

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

⁶ *Id.* at § 10.404(a).

⁷ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

⁸ FECA Bulletin No. 09-03 (issued March 15, 2009).

⁹ A.M.A., *Guides*, *supra* note 2 at 3, section 1.3, "The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement."

¹⁰ *Id.* at 385-419.

¹¹ *Id.* at 411.

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with OWCP's medical adviser providing rationale for the percentage of impairment specified.¹²

ANALYSIS

While appellant asserts on appeal that the additional conditions of traumatic arthropathy of the hand, joint hand pain, and sprain of wrist had been accepted, the record before the Board indicates that the accepted condition in this case is left hand tendinitis with no other accepted conditions.¹³ As to the degree of appellant's left upper extremity impairment, the Board finds that she is entitled to a one percent impairment.

While it is well established that in determining entitlement to a schedule award, a preexisting impairment to the scheduled member is to be included,¹⁴ there is no evidence that appellant's cervical radiculopathy preexisted the April 10, 2004 left wrist employment injury. In his September 23, 2010 report, Dr. Solberg, an attending physiatrist, advised that his electrodiagnostic findings were the result of a work injury of September 23, 2010 and had not been seen on a previous study of December 12, 2006. Therefore, Dr. Rodriguez's rating for peripheral nerve neuropathy would not be included in the instant claim, as the left upper extremity injury in this case occurred in April 2004, well before Dr. Solberg's 2010 findings. Likewise, there is no indication that appellant had a preexisting thumb condition. Dr. Ivill, an attending physiatrist, who examined appellant in August 2009, noted no atrophy on physical examination of all four extremities.¹⁵ The Board also notes that Dr. Rodriguez duplicated her rating for wrist sprain and tendinitis. Under Table 15-3, Wrist Regional Grid, these are considered the same diagnosis.¹⁶ Therefore, only one of the diagnoses should be considered in rating impairment.

As noted by OWCP's medical adviser, Dr. Slutsky, section 15.2a of the A.M.A., *Guides* provides that in rating impairment, the most applicable diagnosis for the region is to be assessed,¹⁷ which in this case would be wrist tendinitis. Table 15-3 provides that a wrist sprain/strain or tendinitis with residual symptoms is a class 1 impairment with a default grade of

¹² See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

¹³ The Board notes that in his letter of appeal, appellant's attorney included a "cut and paste" from the ACS Web Bill Processing Portal of OWCP. This stated that appellant was eligible for certain codes including those for tenosynovitis of the hand/wrist; traumatic arthropathy of the hand; joint hand pain, and sprain of the wrist. The ACS Web Bill Processing Portal is not contained in the record before the Board. Moreover, the fact that OWCP authorized and paid for some medical treatment does not establish that the condition for which appellant received treatment was employment related. *G.A.*, Docket No. 09-2153 (issued June 10, 2010).

¹⁴ *Peter C. Belkind*, 56 ECAB 580 (2005).

¹⁵ *Supra* note 3.

¹⁶ A.M.A., *Guides*, *supra* note 2 at 395.

¹⁷ *Id.* at 389.

C or one percent. Both Dr. Rodriguez and Dr. Slutsky agreed in this determination, in a physical examination modifier of zero, and in finding that a modifier for clinical studies was not applicable. The physicians, however, differed in applying the grade modifier for functional history. Dr. Rodriguez advised that appellant was entitled to a grade modifier of three. Dr. Slutsky, however, properly noted that section 15.3a of the A.M.A., *Guides* provides that, if the grade for functional history differs by two or more grades from that described by physical examination or clinical studies, the functional history should be assumed unreliable and is to be excluded from the grading process.¹⁸ Dr. Rodriguez's grade modifier of three for functional history was more than two grades greater than her physical examination modifier of zero. Thus, her modifier for functional history is excluded in accordance with the A.M.A., *Guides*.

The maximum class 1 impairment for a wrist sprain/strain/tendinitis under Table 15-3 is two percent and the default grade of C yields one percent impairment.¹⁹ Both Dr. Rodriguez and Dr. Slutsky rated appellant's class 1 impairment at grade C. This can be modified, as explained in section 15.3.²⁰ The Board finds that OWCP's medical adviser properly utilized Table 15-3, Wrist Regional Grid, identified the proper grade modifiers, and applied the net adjustment formula, in reaching his conclusion that appellant had a one percent left upper extremity impairment.

There is no other medical evidence of record addressing the extent of her permanent impairment under the appropriate edition of the A.M.A., *Guides*, which supports any greater impairment.

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant has no more than a one percent permanent impairment of the left upper extremity.

¹⁸ *Id.* at 406-07.

¹⁹ *Id.* at 395.

²⁰ *Id.* at 405-19.

ORDER

IT IS HEREBY ORDERED THAT the February 15, 2011 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: November 23, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board